IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2331 OF 2004

M/s.Excel Ice Service
and another ... Petitioners

versus

Maharashtra State Electricity
Board and others ... Respondents

Mr.Nitin Thakkar with Mr.Peter Lobo, adv. for petitioners.

Mr.P.P.Chavan for M/s.Little & Co; adv. for respondents.

CORAM : A.M.KHANWILKAR, J.

DATE : 30th August 2004

PC :

1. Heard learned counsel for parties. First grievance made in this petition is that the authority below has clearly lost sight of the fact that in the thorough check-up made as late as on 31st October 1998 the meter condition was

found to be in order. If this is so, there was no reason for the authorities below to assess for the period preceding three years from the date of detection in December 1998. I find no substance in this submission. That aspect has carefully been considered by the authorities and the appellate authority has thereafter restricted the assessment for the period from August 1996 when the CTPT came to be replaced for the reasons recorded in the order at pages 75 and 76. It is not possible for this Court in exercise of writ jurisdiction to substitute its view or the finding of fact reached by the Appellate Court.

2. It is next contended that the authority below has not applied principle stated in condition for supply No.31(3) as it has demanded charges in excess of 60% of the connected load at the time of inspection and has also not computed the maximum demand and billed accordingly. Even this submission does not commend to me. The authority below has clearly addressed to this grievance which was raised before it on behalf of petitioner. The appellate authority has directed computation of demand charges in terms of Commercial Circular No.129. By issuing such direction the grievance regarding

inappropriateness of the demand charges as well as fluctuations of lean and peak period has also been taken into account. If this is so, no case for interference is warranted.

3. It was next submitted that the petitioner has been exonerated of the criminal case instituted against them. For which reason the proposed action against petitioners could not have been proceeded further. This submission has been rightly countered by the counsel for respondents by placing reliance on the observations made by the Apex Court in the decision reported in (2003)5-SCC-226 (J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and others), in particular para no.13. This decision is also pressed on behalf of respondents to contend that the scope of interference by High Court in exercise of writ jurisdiction is circumscribed and the parameters for judicial review are limited. Be that as it may, the fact that petitioners have been exonerated of the criminal case cannot be the basis for dropping the present action against the petitioners. On the other hand, both the authorities below have noted the discrepancy of the record as has been stated at page 75 by the appellate authority to hold that

the action against petitioners was inevitable as the discrepancies remained unexplained.

4. The last submission made on behalf of petitioners is that the first authority assessed M.D. at 637 KVA during peak period and 437 KVA during lean season, whereas appellate authority on its own in the appeal preferred by the petitioners has assessed M.D. as 637 KVA (maximum recorded M.D. in October, 1997 after checking of metering installation). The grievance made is that the benefit given by the first authority to the petitioners of the lean and peak period has been taken away by the appellate authority in the appeal preferred by the petitioners. Learned counsel for respondents submits that the said position arises because the appellate authority issued direction to compute the demand as per commercial circular no.129 which would provide necessary formula in that behalf. However, none of the counsel have placed on record said circular before this Court. It is not possible to accept the submission on behalf of respondents without examining said commercial circular. If this is the limited aspect that needs to be examined, the petitioner may approach the authority who in turn shall re-examine the

case only to this limited extent and pass necessary orders as may be advised in accordance with law after affording opportunity of being heard to the petitioners before passing of final decision.

5. At this stage Mr.Thakkar, learned Senior Counsel for petitioners submits that since the petitioners have been given liberty to approach the appellate authority to examine the abovesaid last submission, the petitioners may also be permitted to canvass argument regarding applicability of General Circular (Commercial) No.316. To this submission learned counsel for respondents submits that grievance with regard to Circular No.316 was canvassed before the appellate authority on the earlier occasion but the same did not find favour with the appellate authority, as can be discerned from the observations made in the impugned decision. It is not possible for this Court to permit the petitioners to re-open the entire inquiry. The petitioner can approach the appellate authority for the limited purpose as referred to in paragraph 4 above.

6. Petition is disposed of on the aforesaid

basis. No order as to costs.

7. The petitioners may apply to the appellate authority within a period of three weeks from today failing which it will be open for the respondents to proceed to give effect to the order impugned in this writ petition. The interim protection granted in favour of the petitioners shall continue for a period of three weeks from today and on application being made by the petitioner within the specified time before the appellate authority, it will be open for the appellate authority to pass such orders as may be advised.

(A.M.KHANWILKAR, J.)